

Introduced by Senator Leno

February 21, 2012

An act to amend Sections 300, 400, and 420 of the Family Code, relating to marriage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1140, as introduced, Leno. Marriage.

(1) Existing law defines marriage as a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary. Under existing law, consent to a marriage must be followed by a marriage license and solemnization of the marriage.

This bill would define the term marriage as a personal relation arising out of a civil contract between a man and a woman, established pursuant to a State of California marriage license issued by the county clerk, to which the consent of the parties capable of making that contract is necessary. The bill would retain the requirement that consent of the parties be followed by solemnization of the marriage.

(2) Existing law enumerates persons who are authorized to solemnize a marriage, including any priest, minister, rabbi, or authorized person of any religious denomination.

This bill would specify that no priest, minister, rabbi, or authorized person of any religious denomination, or his or her religious denomination, would be required to solemnize a marriage that is contrary to the tenets of his, her, or its faith. The bill would state that any refusal to solemnize a marriage under that provision shall not affect the tax exempt status of any entity.

(3) Under existing law, no particular form of marriage ceremony is required for solemnization, but the parties must declare that they take

each other as husband and wife in the presence of witnesses and the person solemnizing the marriage, with certain exceptions.

This bill would make a technical, nonsubstantive change to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 300 of the Family Code is amended to
2 read:

3 300. (a) Marriage is a personal relation arising out of a civil
4 contract between a man and a woman, *established pursuant to a*
5 *State of California marriage license issued by the county clerk*, to
6 which the consent of the parties capable of making that contract
7 is necessary. Consent alone does not constitute marriage. Consent
8 must be followed by the issuance of a license and solemnization
9 as authorized by this division, except as provided by Section 425
10 and Part 4 (commencing with Section 500).

11 (b) For *the* purposes of this part, the document issued by the
12 county clerk is a marriage license until it is registered with the
13 county recorder, at which time the license becomes a marriage
14 certificate.

15 SEC. 2. Section 400 of the Family Code is amended to read:

16 400. Marriage may be solemnized by any of the following
17 who is of the age of 18 years or older:

18 (a) A priest, minister, rabbi, or authorized person of any religious
19 denomination. *No person authorized by this subdivision, or his or*
20 *her religious denomination, shall be required to solemnize a*
21 *marriage that is contrary to the tenets of his, her, or its faith. Any*
22 *refusal to solemnize a marriage under this subdivision shall not*
23 *affect the tax exempt status of any entity.*

24 (b) A judge or retired judge, commissioner of civil marriages
25 or retired commissioner of civil marriages, commissioner or retired
26 commissioner, or assistant commissioner of a court of record in
27 this state.

28 (c) A judge or magistrate who has resigned from office.

29 (d) Any of the following judges or magistrates of the United
30 States:

1 (1) A justice or retired justice of the United States Supreme
2 Court.

3 (2) A judge or retired judge of a court of appeals, a district court,
4 or a court created by an act of Congress the judges of which are
5 entitled to hold office during good behavior.

6 (3) A judge or retired judge of a bankruptcy court or a tax court.

7 (4) A United States magistrate or retired magistrate.

8 (e) A legislator or constitutional officer of this state or a Member
9 of Congress who represents a district within this state, while that
10 person holds office.

11 SEC. 3. Section 420 of the Family Code is amended to read:

12 420. (a) No particular form for the ceremony of marriage is
13 required for solemnization of the marriage, but the parties shall
14 declare, in the physical presence of the person solemnizing the
15 marriage and necessary witnesses, that they take each other as
16 husband and wife.

17 (b) Notwithstanding subdivision (a), a member of the Armed
18 Forces of the United States who is stationed overseas and serving
19 in a conflict or a war and is unable to appear for the licensure and
20 solemnization of the marriage may enter into that marriage by the
21 appearance of an ~~attorney-in-fact~~, *attorney-in-fact*, commissioned
22 and empowered in writing for that purpose through a power of
23 attorney. The ~~attorney-in-fact~~ *attorney-in-fact* must personally
24 appear at the county clerk's office with the party who is not
25 stationed overseas, and present the original power of attorney duly
26 signed by the party stationed overseas and acknowledged by a
27 notary or witnessed by two officers of the United States Armed
28 Forces. Copies in any form, including by facsimile, are not
29 acceptable. The power of attorney shall state the full given names
30 at birth, or by court order, of the parties to be married, and that the
31 power of attorney is solely for the purpose of authorizing the
32 ~~attorney-in-fact~~ *attorney-in-fact* to obtain a marriage license on the
33 person's behalf and participate in the solemnization of the marriage.
34 The original power of attorney shall be a part of the marriage
35 certificate upon registration.

36 (c) No contract of marriage, if otherwise duly made, shall be
37 invalidated for want of conformity to the requirements of any
38 religious sect.

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